

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed November 8, 2007 (Paper No. 20071104). Upon entry of this response, claims 1-22 are pending in the application. Applicant respectfully requests that there be reconsideration of all pending claims.

I. **Rejection of Claims 1 and 13 under Obviousness-Type Double Patenting**

Claims 1 and 13 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting, as allegedly being unpatentable over claims 1 and 13 of co-pending Application No. 10,602,987. As neither application has allowable claims, Applicant respectfully submits that a determination of obviousness is premature. Since this is a provisional rejection, Applicant chooses not to file a terminal disclaimer at this time. Applicant may file a terminal disclaimer when the instant application has allowable subject matter, but also reserves the right to argue that the obviousness-type double patenting rejection is improper.

II. **Rejection of Claims 1 and 13 under 35 U.S.C. § 112, First Paragraph**

Claims 1 and 13 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. The Office Action (p. 5) contends that "the argument presented in the submitted Affidavits (page 4) used to support the claim amendment filed on 1 August 2006 is not persuasive in lack of any showing or evidence that using a packet identifier to select for partial encryption based on the video/audio/data service component types." (No emphasis added) Applicant respectfully submits that the statements in the previously submitted Rule 1.132 Affidavit, made by a person of skill in the art, are in fact **evidence** that Provisional Application 60/054,575 provides written description support for the claims. Applicant requests that the rejection be withdrawn.

III. Rejection of Claims 1-22 under 35 U.S.C. §103

Claims 1-22 have been rejected under §103(a) as allegedly obvious over U.S. (5,418,782 to *Wasilewski* (hereinafter *Wasilewski* '782) in view of U.S. 5,081,678 to *Kaufman* (hereinafter *Kaufman*). Applicant respectfully submits that this rejection has been overcome by claim amendments made herein. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. § 103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

A. Independent Claims 1 and 13

Applicant respectfully submits that the combination of *Wasilewski* '782 and *Kaufman* fails to teach, disclose or suggest at least "selecting for encryption a digital bit stream from a plurality of digital bit streams using an identifier" as recited in claim 1 or "selecting for encryption a program from a transport stream using an identifier" as recited in claim 13.

The Office Action (pp. 7-8) contends that the combination teaches this feature, using the following reasoning. First, the Office Action asserts that *Wasilewski* '782 teaches encrypting a particular elementary stream then packetizing the elementary stream and inserting it into a transport stream, and therefore teaches "a transport stream constitutes a portion of encryption packets and a portion of non-encryption packets". Next, the Office Action asserts that *Kaufman* teaches "a particular key identifier from a plurality of keys can be placed inside a packet simply for encryption/decryption security purpose". Finally, the Office Action contends that the key identifier of *Kaufman* "can be considered as a packet identifier".

Applicant will assume, for the sake of argument, that the above characterizations of *Wasilewski* '782 and *Kaufman* are correct, such that the premises of the Examiner's argument are correct. Even so, Applicant respectfully disagrees with the conclusion, namely, that

combining encrypting a particular elementary stream *Wasilewski* '782 with *Kaufman*'s key identifier results in "selecting for encryption...using an identifier" as recited in claims 1 and 13 (emphasis added).

As Applicant argued earlier in Remarks in Support of Pre-Appeal Brief Conference (filed November 8, 2007), while *Wasilewski* '782 does disclose the presence of a PID, it fails to disclose how to **select** which packets are encrypted. *Kaufman* teaches that a key identifier within a packet tells the receiver which key to use to decrypt the packet. Applicant agrees that this use of the key identifier is "for encryption/decryption security purpose" as characterized by the Office Action (p. 8, line 8), and will assume for the sake of argument that this key identifier corresponds to the claimed "identifier". Even so, *Kaufman* does not teach that this key identifier is used to **select** which packets are encrypted. Thus, the addition of *Kaufman* does not cure the deficiencies of *Wasilewski* '782.

Accordingly, the proposed combination of *Wasilewski* '782 in view of *Kaufman* does not teach at least the features described above and recited in claims 1 and 13. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

B. Dependent Claims 2-12 and 14-22

Since independent claims 1 and 13 are allowable, Applicant respectfully submits that claims 2-12 and 14-22 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-12 and 14-22 be withdrawn.

IV. Rejection of Claims 1-22 under 35 U.S.C. §103

Claims 1-22 have been rejected under §103(a) as allegedly obvious over U.S. (5,359,601 to *Wasilewski* (hereinafter *Wasilewski* '601) in view of U.S. 5,081,678 to *Kaufman*

(hereinafter *Kaufman*). Applicant respectfully submits that this rejection has been overcome by claim amendments made herein. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

A. Independent Claims 1 and 13

Applicant respectfully submits that the combination of *Wasilewski* '601 and *Kaufman* fails to teach, disclose or suggest at least "selecting for encryption a digital bit stream from a plurality of digital bit streams using an identifier" as recited in claim 1 or "selecting for encryption a program from a transport stream using an identifier" as recited in claim 13.

The Office Action (pp. 7-8) contends that the combination teaches this feature, using the following reasoning. First, the Office Action asserts that *Wasilewski* '601 teaches encrypting a particular elementary stream then packetizing the elementary stream and inserting it into a transport stream, and therefore teaches "a transport stream constitutes a portion of encryption packets and a portion of non-encryption packets". Next, the Office Action asserts that *Kaufman* teaches "a particular key identifier from a plurality of keys can be placed inside a packet simply for encryption/decryption security purpose". Finally, the Office Action contends that the key identifier of *Kaufman* "can be considered as a packet identifier".

Applicant will assume, for the sake of argument, that the above characterizations of *Wasilewski* '601 and *Kaufman* are correct, such that the premises of the Examiner's argument are correct. Even so, Applicant respectfully disagrees with the conclusion, namely, that combining encrypting a particular elementary stream *Wasilewski* '601 with *Kaufman*'s key identifier results in "selecting for encryption...using an identifier" as recited in claims 1 and 13 (emphasis added).

As Applicant argued earlier in Remarks in Support of Pre-Appeal Brief Conference (filed November 8, 2007), while *Wasilewski* '601 does disclose the presence of a PID, it fails to disclose how to **select** which packets are encrypted. *Kaufman* teaches that a key identifier within a packet tells the receiver which key to use to decrypt the packet. Applicant agrees that this use of the key identifier is "for encryption/decryption security purpose" as characterized by the Office Action (p. 8, line 8), and will assume for the sake of argument that this key identifier corresponds to the claimed "identifier". Even so, *Kaufman* does not teach that this key identifier is used to **select** which packets are encrypted. Thus, the addition of *Kaufman* does not cure the deficiencies of *Wasilewski* '601.

Accordingly, the proposed combination of *Wasilewski* '601 in view of *Kaufman* does not teach at least the features described above and recited in claims 1 and 13. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

B. Dependent Claims 2-12 and 14-22

Since independent claims 1 and 13 are allowable, Applicant respectfully submits that claims 2-12 and 14-22 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 2-12 and 14-22 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-22 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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